IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2181 OF 2006

Mohini Abaso Lade ... Petitioner

Vs.

State of Maharashtra & Anr. ... Respondents

Mr. H.S. Venegavkar for the petitioner.

Ms. R.M. Gadhvi, A.P.P. for the State.

Mr. P.J. Pawar for respondent 2.

CORAM : SMT. RANJANA DESAI, J.

DATED : 15TH DECEMBER, 2006.

P.C. :-

1. The petitioner has challenged in this petition, order dated 7/10/2004 passed by the Additional Sessions Judge at Karad in Criminal Revision Application No.30 of 2004. The learned Session Judge has allowed the revision application and set aside the order dated 2/4/2004

passed in Criminal Case No.144 of 2004 by the Judicial Magistrate, First Class, Karad. By the impugned order, the learned Sessions Judge has directed the Judicial Magistrate, First Class, Karad to issue process against accused 1 and 2 for offence under sections 406 and 420 read with section 34 of the Indian Penal Code (for short, "the IPC").

2. I have heard Mr. Venegavkar, the learned counsel appearing for the petitioner. He submitted that the learned Sessions Judge could not have set aside the order passed by the Judicial Magistrate, First Class, without hearing the accused and, therefore, the order may be set aside. In this connection, he relied on the judgment of this court in ***Balasaheb Keshav Thakre & Ors. v. Kusumbai Manikrao Deshmukh & Anr., 2000 All MR (Cri.) 662***. I find no substance in this submission because the facts of this case are different from the facts which were before this court in ***Balasaheb Keshav Thakre' case (supra)***. In that case, the process was issued by the learned Magistrate against accused 4 but no process was issued against the petitioners therein. The petitioners were discharged in view of section 203 of the Code of Criminal Procedure Code (for short, Cr.P.C.). The said order was challenged by the complainant therein by filing revision application. The learned Sessions Judge allowed the revision application; set aside the order passed against the petitioners therein and himself issued the

process against the petitioners. It is in this context that this court observed that since the petitioners were discharged by the trial court in view of the provisions of sections 397 and 398 of the Cr.P.C., the said order could not have been set aside without hearing the petitioners. Such are not the facts here. Here the complaint was dismissed without issuing the process. The learned Sessions Judge quashed and set aside the said order and issued process. At the stage of issuance of process, the accused obviously cannot be heard. The first submission of the learned counsel must, therefore, be rejected.

3. The learned counsel then submitted that the process ought not to have been issued against the petitioner because the dispute is of a civil nature. I am unable to agree with the learned counsel. I have carefully perused the complaint. In the complaint, it is alleged that the petitioner, who is the power of attorney holder of the complainant has misappropriated the money, which was lying in the bank account of their deceased mother. It is stated that the petitioner has misappropriated the pension amount of their deceased father. It, therefore, cannot be said that if the allegations made in the complaint are taken at their face value, they do not disclose any criminal offence. Whether there is, in fact, any substance in the allegations or not can only be decided after the evidence is adduced. I make it clear that I have not expressed any

opinion on the merits of the case. Petition is dismissed.

[SMT. RANJANA DESAI, J.]